

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
October 15, 2007, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, and Superintendent of Public Instruction Linda McCulloch

VIA PHONE: State Auditor John Morrison and Secretary of State Brad Johnson

Mr. McGrath moved for approval of the minutes from the September 17, 2007, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.

BUSINESS CONSIDERED:

1007-1 PRELIMINARY APPROVAL FOR LYMAN CREEK LAND EXCHANGE
DNRC/FWP SULA-CALF CREEK-THREEMILE

Mary Sexton, DNRC Director, said that this is for preliminary approval of the Lyman Creek sale between FWP and DNRC. It includes 360 acres managed by FWP in the Sula State Forest, which is known as the Wetzsteone property. It was purchased by FWP and the Rocky Mountain Elk Foundation in the last year and would be exchanged for 240 acres of state trust land in the Calf Creek and Threemile Wildlife Management Areas. The beneficiaries are the common schools and public buildings. FWP would be acquiring less acreage in the exchange because of the value of the timber. The Wetzsteone property burned in 2000 and there is standing timber available on the property, so we need an assessment of timber. That is the reason for the difference in acreage of the exchange. All other exchange criteria are met or exceeded. Everything is within Ravalli County.

Motion was made by Mr. Johnson to approve the Lyman Creek Sale. Seconded by Mr. McGrath.

Mr. McGrath said he commends the staff of the DNRC and FWP for the sale. I also want to publicly thank the Rocky Mountain Elk Foundation for stepping up and helping us with this.

Governor Schweitzer said that the last time there was discussion of land trade in this area it caused a stir. Is the community more supportive now?

Ms. Sexton said this moved forward because of the support of the community due to excellent hunting opportunities provided by the consolidation of DNRC and FWP lands.

A vote was taken on the motion to approve. Motion carried unanimously.

1007-2 FINAL APPROVAL FOR LAND BANKING SALE #201, CARBON COUNTY

Ms. Sexton said this is for final approval of land banking sale #201 for a parcel that went to auction on September 11, 2007, for a minimum bid of \$1.3 million for 295 acres. This is an

isolated parcel within two miles of Red Lodge and the sale will be closed within 30 days of approval.

Motion was made by Mr. McGrath to approve the final sale. Seconded by Ms. McCulloch. Motion carried unanimously.

1007-3 PRELIMINARY APPROVAL FOR LAND BANKING ACQUISITION OF
VANDALIA RANCH

Ms. Sexton said this is for preliminary approval of the land banking acquisition of the Vandalia Ranch. By the end of FY 08 we will have sold another 20,000 acres. We are moving forward with sales and looking for different acquisition opportunities. We have \$3.5 million in the bank right now. By end of FY 08 we may have up to \$13 million in the bank for land banking. The Vandalia Ranch is on the Milk River and is 4783 acres. We have to match acre for acre as best we can. The value is between \$4 and \$5 million. We have been under discussion with FWP for a joint effort since they have done much in the area with conservation easements and other acquisitions. We hope to work with them to bring down the value so our investment would be between \$3 million and \$3.5 million. It has good agricultural lands, water rights for 426 acres, rangeland, and is close to Vandalia River. Seven miles of the Milk River are on the ranch. Discussions have been had with the land owner and FWP. We are looking to move forward in discussions with the land owner and FWP and getting an appraisal of property to see if available for acquisition.

Motion was made by Mr. Johnson to give preliminary approval for the land banking acquisition. Seconded by Ms. McCulloch.

Mr. McGrath said he has concerns about this and will vote no because we just acquired a large piece of acreage on the Tongue River. I don't think we have this kind of dough right now and this isn't currently a priority area. This property—or something else—could be worked out through conservation easements or other arrangements. We should be looking at other priority areas and not try to acquire this land through land banking. I understand land values are going up and this isn't going to change. I will vote no.

Ms. McCulloch said she has similar concerns to Mr. McGrath but will vote yes since this is for preliminary approval. But I would like to see more information concerning the issues that have been raised.

Mr. Morrison said he trusts the DNRC to facilitate good deals and over \$1000 per acre for land in that part of the state seems high.

Governor Schweitzer said that he is privately in the business of buying and selling ranches. Since this is a 250 cow/calf operation for six months and also has additional crops, it is being valued at \$17,000 or \$20,000 per animal unit. While western Montana seems to be fetching those prices for cow/calf ranches, eastern Montana still seems able to buy ranches at \$8,000 to \$12,000 per animal unit. It may be that this land is highly prized because of the Milk River frontage. How much Milk River frontage does it have?

Ms. Sexton said she believes it has about seven miles. One of the reasons we are looking at this property is to partner with FWP in either an easement or an acquisition.

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Tom Schultz, DNRC Trust Land Management Division Administrator, said that as the river meanders there are eleven miles on the property, and seven miles as the river sits in the sections that are adjacent to it. The acreage as it breaks down is 3400 acres for grazing while the rest is haylands in the bottoms that is managed for crop production. We placed that acreage at an elevated value since it is irrigated, as opposed to the uplands on the cattle operation.

Ms. McCulloch asked Mr. Schultz how long the area has been unavailable for public recreation.

Mr. Schultz said it is his understanding that the current owner has had the land for three to four years, during which the area has not been available for public recreation. The owner does hunt it and allow friends on the property.

Mr. Morrison said he is comfortable with this on a preliminary approval level and trusts the DNRC to look at the price carefully.

Larry Peterman, FWP Chief of Field Operations, said they are anxious to work with the DNRC to acquire an easement on this property. We've got an initiative on the Milk River to protect as much of it and the bottoms as possible because we've got a situation in eastern Montana in land ownership and wildlife. We have excellent deer populations, antelope, sharptail in the uplands, and an incredibly rich pheasant habitat in the bottoms. One of the most threatened areas is along the river corridors and we're losing a lot of access along those areas because people are buying them for hunting and fishing opportunities. Much like in western Montana where they buy property for scenery, in eastern Montana they lease property for hunting or hunting clubs buy property. So, quite frankly we look forward to working with the DNRC trying to protect as much of the Milk River bottom as possible and to have it available for the public.

Governor Schweitzer asked is Senator Kitzenberg on board with the project because he is after me all of the time to get more parkland in northeast Montana?

Mr. Peterman said he doesn't know if Senator Kitzenberg is on board, but he can find out.

Mr. Schultz said we have not spoken directly with Senator Kitzenberg, but we have met with Valley County commissioners. The makeup of the commissioners is such that one of the members has given a certified yes and the other two are reluctant. We have purchased another ranch in Valley County, but we have not sold any land in Valley County, so that has been an issue. The other two commissioners have indicated that more state ownership is not necessarily a blessing, but they are concerned about out-of-state interests buying up land and public access. I think in that light we have not heard a no from the commissioners. We have heard a definite yes from one and the other two are on the fence saying we're not going to oppose it yet, but we think there is merit in continuing public access to these lands.

Governor Schweitzer said there is a member of FWP board, Willie Doll, who lives in this area. What are his comments?

Mr. Peterman said Mr. Doll is supportive of working with the Milk River Initiative and trying to acquire this property.

Motion was made by Ms. McCulloch for preliminary approval. Seconded by Mr. Johnson. Motion carried 4-1 with Mr. McGrath dissenting.

1007-4 APPROVAL FOR COMMUNITIZATION UNIT REQUEST FROM DEVON
ENERGY

Ms. Sexton said this is for a communitization agreement in Blaine County. The state trust land is 80 acres of eagle sand formation. This is a gas well comprised of 50% of the communitized area and we will see 6.25% of all of the gas production.

Governor Schweitzer said that with a communitization agreement, the state of Montana effectively says we don't own all of the minerals in a particular place, and in order for someone else to develop those minerals they have to throw in with us and we will share the proceeds. In this case we have a minority of the minerals and they have the majority. So, are we getting the same kind of compensation as the mineral owners around us?

Ms. Sexton said yes, proportionate to our share.

Governor Schweitzer said the reason he brings this up is that we look at oil and gas a lot, and from time to time we look at other things like coal. So, we would perhaps use the same logic when we go forward in communitization of coal if we have an adjacent section to someone else. If we develop coal we are going to develop it over either a three thousand, four thousand, five thousand, or six thousand acre area in a checkerboard of ownership, much the way we do in a quarter section of natural gas. It is very difficult for someone to start a big development if it is just a single section of private land unless the state is involved. The state has land at Colstrip, as do three or four other private companies, and that is how we have effectively moved forward with development. Presumably when we look at coal we can look at it the same way we do oil and gas.

Ms. Sexton said to get the maximum for the market value you need to have economies of scale, and certainly with communitization agreements this allows us to develop resources we might not otherwise be able to. That would probably apply to coal as well.

Monte Mason, DNRC Minerals Management Bureau Chief, said actually for coal we have not entered into communitization agreements because oil and gas are liquids that move through the pore spaces, so you need to pool acreage in order to share equitably without drilling multiple wells. This way you don't have a Spindletop situation like you saw down in Texas. The Board of Oil and Gas Conservation sets the proper spacing at 160 acres. We have half of that—80 acres. We are subject to the regulatory authority of the Board of Oil and Gas, so the only thing we can do is share 50/50 because they have established our share with this mobile resource. With coal we can't do that because coal is stationary. They keep track by survey and the coal that comes out. We ensure we get our share by physically measuring because the coal on one section is distinct from coal on another section, so we have not done communitization in the past. It is not to say we couldn't do that. The advantages there would be more an incentive for the private mineral owners who would want to pool and balance their royalty shares, over time. When you do it in this distinct fashion, you could have all the coal coming from your strip of land for awhile, and then the strip mining moves on to private land, so you get a lot of royalties for three months; then maybe the next three months someone else would get it. Then you balance it out. Presumably there would a closeout balancing to true up annually whatever is appropriate for the development. For us since revenue goes to the trust, traditionally the royalty fluctuation over time hasn't been an issue for us. So we've not been in that mode. It's not to say it couldn't be done. We've had some other discussions with the other coal owner at Otter Creek along

those lines, with what might be appropriate with that type of land ownership. No decisions have been reached.

Governor Schweitzer said you brought up Otter Creek, so in the case of Otter Creek where the ownership is state and Great Northern, where you drill a gas well 5000 feet deep in every section and someone else owns the other half section, you are effectively paying all the costs to put that well down. Obviously gas will come from both sides, but you pay for the infrastructure to put the well down and the mechanism to get the gas to market. In the same way, if you have a brand new development of coal and there are several owners of that coal there has to be some type of impetus to build that infrastructure—the rail, the first mine, the conveyor belts, even the potential of some electric or gas facility from the coal. So, just like we do with the gas, as we look forward to developing coal resources we certainly need to make sure the state of Montana is selling our resources for the real market value. In other words, the state does not sell our coal or the concession for our coal resources substantially below what the other owners in the area are selling theirs at. So the infrastructure and the well and pipeline are paid for by the state while everyone else has higher value pull because the infrastructure has already been put in for the small leases of Montana. These are just ideas about plans for developing our coal resources and what is actual fair market value.

Mr. Mason said yes one thing to note is that we are talking about the royalty interest cost-free pooling agreement, and for every one of these, whether it's coal or oil and gas there is a working agreement that pools the operating costs and divides costs amongst the various ownerships. So we are really talking about two different things here. We're a cost-free share. So what you are talking about does happen even on this 160-acre well. If one company drills it and they have leases on both acreages, problem solved. But if there are two mineral lessees they will have a joint operations agreement that apportions the working interests' costs so it's fair to them. We are a royalty interest cost-free, so we enter into a communitization agreement that only affects the royalty interest.

Governor Schweitzer said I think many of us are well aware of that there has been a legal structure around the development of oil and gas in this way, and now as we move forward with some creative ideas of developing other energy assets, we may apply some strategic principals toward those interests as well.

Motion was made by Ms. McCulloch to approve the communitization agreement. Seconded by Mr. Johnson. Motion carried unanimously.

1007-5 DEVIL MOUNTAIN LIMITED ACCESS TIMBER SALE

Ms. Sexton said the Devil Mountain timber sale is eight miles northeast of Drummond and is for 730,000 board/feet plus 1000 tons of pulp material that would be moved a fixed rate. This is primarily a salvage sale of pine beetle killed timber, but there would also be some green timber harvested. The sale would be allowed through the Mannix Ranch, which is also doing some timber harvesting on their property. They are granting exclusive access to Pyramid Mountain Lumber Company. Formal scoping was not initiated because of the limited access nature of the sale.

Governor Schweitzer asked if both timber sales (items 1007-5 and 1007-6) could be done together unless there is some objection.

Ms. Sexton and the other land board members agreed.

1007-6 STILL COOL BUGS SALVAGE TIMBER SALE

Ms. Sexton said Still Cool Bugs is a salvage timber sale of timber recently killed by mountain pine beetles three miles east of Lincoln. Removal of sawlog and non-sawlog material is required. Leave tree composition is designed to promote future conditions, and there will be half to one acre reserves left within the harvest units to provide cover for bears and to break up sight distance. There is no old growth and a half mile of new road will be constructed.

Motion was made by Ms. McCulloch to approve the Still Cool Bugs and Devil Mountain timber sales. Seconded by Mr. Morrison.

Ms. McCulloch asked if the mountain pine beetles are what killed all the trees up Flescher Pass.

David Groeschl, DNRC Forest Management Bureau Chief, said what you see through Flescher Pass is spruce bud worm which is affecting the Douglas fir trees. Spruce bud worm doesn't necessarily kill the trees outright like the mountain pine beetle does with lodgepole pine. Instead they will defoliate it and turn it reddish-brown. The firs can recover after a couple of years, but if they are affected every year the spruce bud worm can end up killing the firs. That's what you are seeing up Flescher Pass.

Ms. McCulloch asked if the increased frequency is worrisome.

Mr. Groeschl said the warmer, dryer summers have caused an increase in insect and disease outbreaks. Spruce bud worm, mountain pine beetle, and other outbreaks have been increasing. That is why the salvage sales make up a higher proportion of our sales—because of all of the insects.

Mr. Morrison said this doesn't relate to these particular sales, but that he and Attorney General McGrath were flying to Dillon a few weeks ago and noticed a ton of parasitic damage in the forests. I would be interested if DNRC could get some assessment on what kind of acreage and total timber area is being affected by these things and how it is affecting the trust. Is someone studying that?

Ms. Sexton said yes, we have been looking at that and we would be more than glad to give you a cogent report in two months. Next month we will have more salvage sales for bug kills as well as fires.

Governor Schweitzer said he has concerns about how fast we are moving on salvage for fire this summer. Do we have crews out cruising? Do we have crews putting together inventories so the land board will have an opportunity to make sales while there is still some value?

Mr. Groeschl said many folks are out on the ground right now. At the November land board meeting there will be five or six salvage sales with twelve to fifteen million board/feet. That is approximately 60% of planned fire salvage sales, and the rest will be on the January or February land board agenda. A lot of folks on the ground are doing the assessments and sale prep. Quite a bit of salvage harvesting will be done this winter.

A vote was taken on the motion to approve. Motion carried unanimously.

Mr. Morrison excused himself to go to a funeral service.

1007-7 APPROVAL OF BULL RIVER WMA/NOGGLE CREEK ADDITION (FWP)

Ms. Sexton said that this is for the purchase of approximately 255 acres near the Bull River Wildlife Management Area south of Troy in Lincoln County for FWP. Larry Peterman from FWP is here to present the proposal.

Mr. Peterman said he is here to seek approval of 255 acres immediately north of the Bull River Wildlife Management Area. This is at a cost of \$1.657 million, and we will be using Habitat Montana funds for this. If you look at the map, in addition to the purchase of 255 acres from Revett Minerals, the conservation fund is acquiring an additional 400 acres immediately adjacent to that. This does a couple of things. First of all, this land was subdivided for development and it is an important migration corridor for the East and West Cabinet Mountains. It also provides winter range for elk, so it is a migration corridor for them as well. This acquisition would provide secure public access for the Forest Service land to the east and also to the property itself. Revett Minerals has purchased this as part of their mitigation package for proceeding forward with the mine.

Motion was made by Ms. McCulloch to approve the purchase. Seconded by Mr. McGrath. Motion carried 3-0 with the Governor abstaining.

1007-8 APPROVAL OF WING DAM ADDITION DONATION (FWP)

Ms. Sexton said this is a donation of 22 acres along the Missouri River and Larry Peterman can give you the details.

Mr. Peterman said this is a donation of an island 22 acres north of Cascade, immediately adjacent to ten acres called the Wing Dam Fishing Access Site. This is an island which is adjacent to it which the land owner is donating it to us. We've run through an extensive public involvement process with the EA and some issues were raised over an initially proposed parking lot and development. Landowners were concerned, and we weren't able to get access over Burlington Northern railroad tracks for that, so then we looked at the alternative, which was also in the EA. The alternative plan involves doing no development at the site, but acquiring it and using it for a river access. There is an access site a couple miles up the river at Cascade which the city maintains so the people can come down there and use that area. We would mark the boundary between the donation and private property so people would know where the boundary is. Another concern was raised about hunting in the area. Hunting would be limited by the EA to archery and waterfowl hunting, which is on the riverside in the opposite direction. So we've limited the activity there and it is going to be accessible by the river, provide fishing opportunities, hiking through the island, bird watching, and that sort of the thing. It's an area which is used now by the public and this donation would put it in public ownership. If you look at the map there are a couple of islands beyond the donated property and those are state land islands. The appraisal value of the island is \$126,000.

Motion was made by Mr. McGrath to approve the donation. Seconded by Ms. McCulloch. Motion carried unanimously.

1007-9 RIGHTS-OF-WAY APPLICATIONS FOR APPROVAL

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Ms. Sexton said she would like to specifically note a few of the rights-of-way. The first one is for a sewer and water main to go beneath the Yellowstone River. You will note that the trust beneficiary for that is the common schools. Usually these dealing with the river beds have gone to the general fund, but now they are going to the common schools. So I just wanted to note that one. And also on page four, regarding James Holt's application, although this road has been used in the past, there is a new single family residence. There is further evidence that this could be further subdivided, so this is not going under an historic easement, but instead falls under our easement policy.

Motion was made by Mr. Johnson to approve the rights-of-way applications. Seconded by Ms. McCulloch.

Ms. McCulloch said for the record, when we talk about our "common schools," there is nothing common about our schools in Montana.

A vote was taken on the motion to approve. Motion carried unanimously.

1007-10 KOOTENAI WMA/CLARK ACQUISITION (FWP)

Ms. Sexton said this item was added by FWP for the proposed purchase of 17 acres that adjoins the Woods Ranch Wildlife Management Area which is seven miles northeast of Eureka. Larry Peterman from FWP is here to discuss this acquisition.

Mr. Peterman said we are here to ask your approval to acquire 17 acres within our Woods River WMA just north of Eureka and south of the Canadian boarder. This area is surrounded on three sides by the WMA as you can see on your map. For many years it has been operated per an agreement with the land owner as part of the WMA, even though it was under private ownership. We've come to an agreement to purchase the area so that it becomes public ownership while remaining part of the WMA. We would be using \$145,000 from big horn sheep funding for this. There is a big horn sheep population on that land. It is a fairly unique population that is pretty important to us.

Motion was made by Ms. McCulloch to approve the acquisition. Seconded by Mr. McGrath. Motion carried unanimously.

Motion was made by Mr. McGrath to adjourn, seconded by Ms. McCulloch.